applies a fortiori to a court which only reads the principal evidence on paper and hears the rest of the evidence *viva voce.*"

and

"It must be said plainly that this was a wholly irregular proceeding and ought not to be repeated. Everyone can understand the temptation to make a short cut like this, but, particularly in a case which is going to depend on the conflict between the two principal witnesses, it is essential to remember the commonplace that it is important not merely that juctice should be done but that it should manifestly be seen to be done."

In the case of *Coleshill* v. *Manchester Corporation,*[3] also mentioned in the quotation given above from the judgment of Thomson C.J. (as he then was), Scrutton L.J., in giving judgment said

"This case was heard under melancholy circumstances. Mr. Justice Fraser, who began the case on Thursday, July 7, and had heard three of the plaintiff's witnesses, was taken ill during the night and died on the Friday. Mr. Justice Acton was sent down from London on the Sunday and, having read Thursday's shorthand notes, at the urgent request of the parties continued the case with the same jury on Monday, the 11th, the Thursday's witnesses not being recalled. I can understand that in the unprecedented and painful circumstances it is unnecessary to take any objection to what happened, but I think it is a precedent which should not be followed in future. I doubt whether a judge has any jurisdiction to continue the hearing of a case in which witnesses have been called in court in the course of the trial before the jury and another judge, it not being a case of evidence being taken on commission or before an examiner."

It is to be noted that in all these three cases the parties consented to the judge, or magistrate, who took over half way (or later) through the case deciding it on evidence (in part or "in toto") not heard by him, but heard and recorded by the first judge, or magistrate. In the instant case there was no specific agreement to the change of magistrates; there is nothing on the record to show whether the parties were asked whether or not they agreed to the change, and the probability is that the last magistrate, Abang Yusof, simply proceeded with the hearing begun by Mr. Michael Tan without any thought that the course might not be a proper one.

Again, in all three cases the appeal court stated that the course taken was irregular and improper (Scrutton L.J. saying that he doubted if the judge who gave the trial judgment had any jurisdiction) and a precedent emphatically not to be followed. In each case, however, the appeal court, in the peculiar circumstances before it, did not see fit to allow the appeal or order a new trial because of the irregularity and impropriety of the course followed.

The instant case is, in my judgment, quite to be distinguished from the three mentioned above. Not only was there a conflict of evidence, as the defendant in her evidence did not admit any part of the plaintiff's case except to agree, impliedly, that she was head of one "hui" (the plaintiff said she was head of two); but more, it is impossible, to my mind, to tell from the defendant's recorded evidence exactly what she did mean, what position she took, what her defence was. On the evidence and pleadings before the trial court this was by no means a clear case.

I am satisfied that in this case, because of the improper and irregular procedure followed, and in all the circumstances, a new trial should be ordered. In fact I go further, it is my opinion and judgment that when a magistrate takes over a case already heard or part heard by another and (without recalling the witnesses already heard, but accepting the evidence recorded by the original magistrate) gives judgment or proceeds to hear further evidence and then give judgment, he has acted without jurisdiction and the purported trial is a nullity. It is, perhaps, just possible that the parties' full and express consent to, or request for, the second magistrate's taking over can give him jurisdiction; I do not have to decide that point here, but would add my word to that of the learned judges already quoted, and say that this course is one which should never be taken.

This appeal is allowed. The judgment and order of the trial court (including the award of costs) is set aside and a new trial before a magistrate other than Mr. Michael Tan or Abang Yusof is ordered.

As I consider fair in the circumstances I make no order as to the costs of the appeal.

Appeal allowed.

LIM CHONG KOOI v. PUBLIC PROSECUTOR

[A.C.J. (Ong J.) May 20, 1965]

[Ipoh — Criminal Appeal No. 83 of 1964]

Prevention of Corruption Act, 1961, ss. 4(a), 6(1), 14 and 15(1) — State officer in Federal department corruptly receiving gratification in relation to principal's affairs — Whether officer agent of Federal or State government — Promise to do act which he had no power to do — Statements made in the course of investigation — Admissibility of.

Evidence — Wrong admission of inadmissible and prejudicial evidence — Whether s. 422 of Criminal Procedure Code (Cap. 6) should be applied to cure defect — Criminal Procedure Code s. 113(1) and Prevention of Corruption Act ss. 14 and 15(1).

The appellant, who was a chief clerk in the mines department, appealed against his conviction and sentence of 2 years imprisonment for an offence under section 4(a) of the Prevention of Corruption Act for receiving the sum of $1,000 in relation to his principal's affairs, to wit, to assist one *R* in obtaining approval for a mining prospecting licence. On appeal it was *inter alia* contended that (a) the trial president erred in law in holding that the appellant was the agent of the State government because he was an employee of the Federation and the mines department is a Federal department (b) the alleged promise or conduct of the appellant to assist *R* did not constitute an act in relation to the affairs of

his principal because the Ipoh East Mines Office had no jurisdiction over land in the Mukim of Bota in the district of Kuala Kangsar (c) the prosecuting officer's criticism of the appellant's failure to give evidence and submit himself to cross-examination was a flagrant violation of section 257(ii) of the Criminal Procedure Code (d) a vast mass of inadmissible and prejudicial evidence had been wrongly admitted (e) a number of documents which should not have been admitted had been admitted prejudicing the appellant's case.

Held: (1) on the facts the learned president was entirely right in holding that the sum of $1,000 had been received by the appellant and that upon the onus of proof being transferred to him by reason of the provisions of section 14 of the Prevention of Corruption Act he had failed to show on the balance of probabilities that the money was received by him otherwise than as illegal gratification;

(2) mining matters are State matters although the department is Federal. Therefore the appellant was in truth and in fact an agent of the State government by whom he was paid his salary;

(3) in view of section 6(1) of the Prevention of Corruption Act, it was not open to the appellant to argue that he had no power to do what he promised;

(4) the prosecution officer's criticism of the failure of the appellant to give evidence did not in any way influence the president in his judgment;

(5) although the evidence and statements made by witnesses in the presence of police officers were wrongly admitted in evidence, the error was of no consequence and contributed nothing to the prosecution case and therefore section 422 of the Criminal Procedure Code should be applied;

(6) it had not been shown that the judgment was wrong in law or against the weight of the evidence and therefore the appeal against conviction must be dismissed;

(7) in the circumstances of the case the sentence ought to be reduced to a fine of $5,000, in default 12 months imprisonment.

Case referred to:—

(1) *Stuart* v. *Queen* 101 C.L.R. 1, 9.

CRIMINAL APPEAL.

David Marshall (*Harcharan Singh* and *H. R. Sankey* with him) for the appellant.

Pawan Ahmad (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was convicted and sentenced to two years imprisonment by the sessions court at Ipoh on the following charge:

"That you, Lim Chong Kooi, on the 2nd day of September 1963, at about 5.30 p.m., at No. 1475 Ashby Road, Ipoh, in the State of Perak, being an agent of the Government of the State of Perak, to wit, chief clerk in the mines department, Ipoh East, did corruptly accept for yourself a gratification, to wit, a sum of $1,000 from one Ramadass, son of G. Retnam, as a reward for doing an act in relation to your principal's affairs, to wit, to assist the said Ramadass s/o Retnam in obtaining approval for a mining prospecting licence and thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act No. 42/61."

He now appeals against his conviction and sentence.

The case for the prosecution, as set out by the president of the sessions court in his grounds of judgment, is as follows: On October 10, 1960 the complainant Ramadass (P.W.2) applied to the land office at Parit for a prospecting licence over 400 acres of land in the Mukim of Bota jointly with one Wong Hon Choong (P.W.8). The matter lay dormant till one day in May 1963 when Ramadass met the appellant through the introduction of one Yau Pak Yan (P.W.13). A few days later Ramadass called on the appellant at the Ipoh East Mines Office, where the appellant was chief clerk, to discuss his application for the prospecting licence. At this meeting the appellant intimated to Ramadass that he could see "some EXCO. members" to get the application approved and for that purpose Ramadass would have to pay certain expenses, a tribute and a lump sum in cash.

On June 11, 1963 Ramadass, without the knowledge of his partner, went to Batu Gajah and made a verbal report to A.S.P. Aziz (P.W.12). This report was taken down in writing on the following day. On this occasion inspector Nainappan (P.W.5) who was stationed in Malacca, was in the house of A.S.P. Aziz in connection with other police affairs, and the assistant superintendent of police thereupon decided that the inspector should pose as a non-English-speaking person willing to finance Ramadass and accompany the latter when he next called on the appellant. Accordingly on July 20, 1963 inspector Nainappan in disguise was taken by Ramadass to the Ipoh East Mines Office, where he was introduced to the appellant as "Maniam". At this meeting it was alleged that the accused demanded $1,000 for expenses and, in the event of the 400 acres being approved, a further 3% tribute and a lump sum payment of $5,000.

Subsequently, two agreements were prepared by the appellant from particulars supplied by Ramadass, one relating to tribute and the other for the lump sum payment. On September 1, 1963, the documents were handed by the appellant to Ramadass for signature by his partner. At about 5.30 p.m. on September 2, 1963, Ramadass and inspector Nainappan kept an appointment at the house of the appellant. The inspector brought along with him $1,000 in cash, with instructions to hand over the same to Ramadass at the appellant's house. There it was alleged that the money was duly handed over to the appellant, who placed it in the envelope containing the two agreements which had, a short while earlier, been signed by Ramadass and attested by inspector Nainappan. The events that took place on this occasion were also witnessed by D.S.P. Stevenson (P.W.6) who had been in hiding in the loft of the appellant's house and from there was watching and taking a cinematograph record of the proceedings. The appellant, however, was not arrested then and there,

but after a lapse of nearly 4 months, on December 30, 1963. Among the various documents found in the house of the appellant after his arrest was a piece of paper (Ex. P5) signed by Ramadass and Wong Hon Choong containing particulars of their application for the 400 acres in Bota, and the originals of the two agreements (Ex. P6) relating to the tribute and lump sum payment.

Before commencement of the hearing of this appeal an application was made by Mr. Marshall, upon notice of motion, for leave to adduce certain additional evidence relating to the payment of a large monetary reward to Ramadass for services rendered by him to the prosecution. I dismissed the application because there already was clear evidence on the record that Ramadass received payments from the police from time to time and A.S.P. Aziz himself also confirmed this fact. The only purpose to be served by adducing such evidence has already been achieved by the cross-examination of Ramadass. The learned president, in his grounds of judgment, had expressly stated that in his view it would be dangerous to accept the evidence of Ramadass alone without corroboration, and I, for my part, consider it unnecessary for the practical purposes of this case to draw any distinction between an agent provocateur and an accomplice. It is sufficient that, as a witness, he has been held so little worthy of credit that his evidence could not be accepted without independent corroboration.

Before I turn to the various grounds of appeal raised by Mr. Marshall, I think this appeal is best dealt with by taking up, as the primary issue of fact, the question whether the $1,000 was accepted and kept by the appellant, or whether this money was taken away by Ramadass when he was on the point of leaving the house. This, too, was the first issue which the learned president considered he had to decide because, if answered in the affirmative, section 14 of the Prevention of Corruption Act then lays the onus on the recipient to show that he did not receive it corruptly as illegal gratification. According to the evidence on the record I have come to the same conclusions as the learned president, and I do so without reliance on any evidence, of which admissibility has been impugned.

In the first place, it was the appellant's case that inspector Nainappan handed the money to Ramadass and Ramadass offered it to the appellant with these words: "This is for the Sungkai land for Cheong Swee Chee." If that is true — and it is to be remembered that the appellant was completely unaware of the true identity of inspector Nainappan — why, then, was Ramadass not told at once to keep it? If, as the appellant claimed, he did not like to get "involved in money matters — in this money", why allow Ramadass to leave it on the table? The appellant alleged that Ramadass removed this money while in the act of departing from the house and in a manner that must have escaped the attention of inspector Nainappan. Why, I ask, was inspector Nainappan left in ignorance of the fact, to think that the appellant had kept the money? Since it was ostensibly intended by Nainappan to be paid to Cheong Swee Chee, and Nainappan had seen it given by Ramadass, but had not seen it taken away by Ramadass, the appellant must have realised that he, the appellant, would be held responsible for its due payment to Cheong Swee Chee. Such being the case, I consider it utterly incredible that the appellant said and did nothing to disabuse Nainappan of his false impression and thereby allow himself to have been wrongly saddled with liability. I am compelled therefore to reject the appellant's story because his silence was consistent with the money being left behind for him.

In the second place, I reject as completely preposterous that both inspector Nainappan and D.S.P. Stevenson were parties to a massive conspiracy, lending themselves as parties to a wicked plot against an innocent man. Both these police officers had stated in their evidence that they saw the appellant himself putting the money into the envelope which contained the two agreements. On this point they not only corroborated each other, but also what was said by Ramadass himself. Once this fact is accepted as proved — there is no reason why it should not be so accepted — it refutes the appellant's story of Ramadass taking away the money, because the envelope itself remained in the possession of appellant, since it was he who stamped the two agreements (Ex. P6). The money could not possibly have been surreptitionsly removed, as the appellant alleged, unless it was quickly pocketed with the envelope and its other contents.

In the third place, the appellant's explanation that the money was for Cheong Swee Chee in respect of the Sungkai land was clearly false. Cheong Swee Chee was a party to the two agreements (Ex. P6) in respect of 400 acres in Bota The only evidence in this case relating to 600 acres of land in Sungkai was an agreement (Ex. P24) whereby, three persons Cheong Swee Chee and the appellant's wife and a third party, were given prospecting rights, in the event of a prospecting permit being granted by Government to two persons Lee Chong Lam and Liew Chong. If Cheong Swee Chee was disposing of those prospecting rights for $1,000 to Nainappan, why were Ramadass and Nainappan not cross-examined specifically on this point, and why were the partners of Cheong Swee Chee not called to testify on the disposal of their prospecting rights? Yet another significant fact is this. The appellant in his statement said he told Ramadass that Cheong Swee Chee's terms were

"3%, $5,000, and $1,000 for the boring rights". He went on to say that Cheong Swee Chee asked him to prepare the necessary documents. Now, there were the two agreements (Ex. P6) relating to the 3% and the $5,000. If the appellant's story about the $1,000 was true, there should have been prepared a third document for this separate transaction, as necessary as,, and even more urgent than, the other two because for a purchase there must be payment immediate or deferred. In the absence of any such third document, therefore, I am satisfied that the alleged sale of boring rights was a pure fabrication.

For the above reasons, on the question of fact, I am satisfied beyond any doubt that the learned president was entirely right in holding that the sum of $1,000 had been received by the appellant and that, upon the onus of proof being transferred to him by reason of the provisions of section 14 of the Prevention of Corruption Act, he had failed to show on the balance of probabilities that the money was received by him otherwise than as illegal gratification.

I turn now to the questions of law. It was contended that the learned president erred in law in holding that the appellant was an agent of the Government of Perak, since he was an employer of the Federation, and the mines department is a Federal department, from which it should necessarily follow that the principal for whom he was agent was the Federation Government and not the Government of the State of Perak. With respect, I do not think there is any substance in this argument. The evidence of the inspector of mines, Ipoh East, is that mining matters are State matters, although the department is Federal. The Ruler in Council of the State of Perak has the last word as regards mining lands in that State. Therefore, as chief clerk in the Ipoh East Mines Office, the appellant was, in truth and in fact, an agent of the State Government by whom he was paid his salary.

The next ground of appeal is that the alleged promise and/or conduct of the appellant to assist Ramadass did not constitute any act in relation to the affairs of his principal, because the Ipoh East Mines Office only had jurisdiction over the area from Tanjong Rambutan, in the North, to Kota Bharu, near Gopeng, in the South. Land in the Mukim of Bota, District of Kuala Kangsar, being entirely outside the jurisdiction and concern of the Ipoh East Mines Office, it was contended that what the appellant did in his leisure hours, as an extra-official job, could not be considered as an act in relation to the affairs of his principal, the State Government. It was pointed out that the appellant had actually emphasised to Ramadass that the latter should regard the expenditure as a gamble and that the approval of the application would be sought merely through the appellant's friendship with a member of the State Executive Council. In my view this argument is not open to the appellant by reason of the provisions of section 6(1) of the Act, which reads:

> "6. (1) Where in any proceedings against any agent for any offence under paragraph (a) of section 4 it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that such gratification was offered as an inducement or reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity so to do, show or forbear or that he accepted the gratification without intending so to do, show or forbear or that he did not in fact so do, show or forbear or that such act, favour or disfavour was not in relation to his principal's affairs or business."

Thirdly, the point was raised that the prosecuting officer's criticism of the appellant's failure to give evidence and submit himself to cross-examination was a flagrant violation of an express statutory provision contained in section 257(ii) of the Criminal Procedure Code. It was argued that this afforded a technical ground, if nothing more, for allowing the appeal: see *Stuart* v. *Queen*.[1] On this point I need only observe that, unlike *Stuart's* case, the appellant here was not tried before a jury, he was defended ably and most strenuously by counsel and the grounds of judgment of the learned president clearly showed that the unfortunate remarks, might as well not have been made by the prosecuting officer for all the effect they had on him.

Mr. Marshall also had some comments to make on the grounds given by the prosecuting officer for the long delay preceding the arrest of the accused, which grounds were not supported by any evidence. On this point I might mention that A.S.P. Aziz gave his explanation as the result of cross-examination by counsel for the appellant, and in any event what the assistant superintendent of police said was completely immaterial and irrelevant so far as the vital issue in this case was concerned, namely: whether the appellant did receive the money and whether he could show that it was not received as an illegal gratification.

Fourthly, it was contended that a vast mass of inadmissible and prejudicial evidence had been wrongly admitted, particularly (a) evidence of conversations between Ramadass and his partner, Wong Hon Choong, in the presence of inspector Nainappan and (b) statements by Ramadass to the appellant in the presence and hearing of inspector Nainappan.

Under section 113(i) of the Criminal Procedure Code no statement made by any person to a police officer in the course of investigation

is admissible as evidence. Section 15(1) of the Prevention of Corruption Act, however, has made serious inroads upon the provisions of section 113(i) by providing that, saving two exceptions:

"In any trial or inquiry by a court into any offence under this Act, or into any prescribed offence, any statement by an accused person, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing of any police officer, whether or not interpreted to him by any other police officer or any other person concerned, or not, in the arrest, shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit."

Consequently, in so far as an accused person is concerned, the effect of section 15(1) is plainly to annul section 113(i) absolutely, so as to render admissible all statements by him of whatsoever nature and made under any circumstances. But *expresso unius exclusio alterius*. Thus, statements made by all persons other than the accused still remain under the ban of section 113(i). The learned president had quite rightly held that statements made by Ramadass in the presence of inspector Nainappan were in fact statements made to a police officer in the course of a police investigation. He admitted, however, evidence of statements by Ramadass, in conversation with his partner Wong Hon Choong at the latter's office, as well as in conversation with the appellant at the latter's house on September 2. In the first instance this clearly was a wrongful admission of evidence. The inspector was intended to be used as a witness, he attended the meeting in the course of police investigation, and not only were the statements made by Ramadass made for the inspector's benefit, but he also caused statements to be made by Wong Hon Choong with the same object. The conversation at the appellant's house, on the other hand, was partially admissible under section 15(1) of the Ordinance, and the admissible portion by itself was good and sufficient even after expunging Ramadass' part in the discussion. The error, nevertheless, was of no consequence and contributed nothing to the prosecution case in affecting the decision. In the circumstances I hold that the provisions of section 422 of the Criminal Procedure Code ought to be applied.

Finally, it was contended that a number of documents, namely, exhibits 21A, 21B, 23, 24, 25 & 26, should not have been admitted, as they were evidence of other offences, and their prejudicial effect was out of all proportion to their intended use as evidence. On this point I should observe that the learned president, anticipating such criticism, had taken care to state expressly in his grounds of judgment: "The prosecution have produced other agreements found in the possession of the accused after his arrest. Although they are admissible under sections 11, 14 and 15 of the Evidence Ordinance and also under section 17(2) of the Prevention of Corruption Act, in deciding this case, I have merely considered Ex. P6 to the exclusion of all the other documents."

Nevertheless, I would go so far as to say that the learned president need not have excluded these documents from consideration. Ex. P22 consisted of 4 applications for mining licences. Having them in his private possession, in the absence of any explanation, is evidence that his interest in the applications was not impersonal. Ex. P23 was an illuminating document, being an authority given to the appellant by his wife, in these terms:

"TO WHOM IT MAY CONCERN

I, POH GEOH ENG (f) National Registration No.

while in sound health and mind, do hereby grant permission and authority to Mr. Lim Chong Kooi, National Registration No. 0610638 to collect and receive all moneys, tributes, payments etc. due to me and to sign for and on my behalf if and when necessary to do so.

(Sd) Poh Geoh Eng (f)."

Ex. P24 was an agreement between Lee Chong Lam and Liew Chong (the applicants for a prospecting permit over 600 acres of land in Sungkai) and three persons, two of whom were Cheong Swee Chee and the appellant's wife.

Ex. P25 comprised 3 original letters addressed to Lee Chong Lam and Liew Chong by the mines department, Tapah, referring to the land, the subject matter of Ex. P24.

Ex. P26 comprised three documents relating to tribute on iron ore payable to the appellant's wife "in consideration of valuable services rendered". Considered with Ex. P23 the phenomenon arises of a housewife who could not or would not collect payments of tribute by herself, but who was competent enough to render to miners services so valuable as to earn her tributes.

From these documents the inescapable inference is that the appellant was using his wife's name in lieu of his own for the purpose of collecting tribute and other money payments, that Cheong Swee Chee was associated with the appellant masquerading as Poh Geok Eng, and that his retention of the original agreements, Ex. P6, in his possession, was not only evidence of his personal interest therein, but also that Cheong Swee Chee knowingly lent his name to the appellant in the subject-matter of the present charge.

Under section 321 of the Criminal Procedure Code, which provides that "No judgment, sentence or order of a magistrate's court shall

be reversed or set aside unless it is shown to the satisfaction of the court of a judge that such judgment, sentence or order was either wrong in law or against the weight of the evidence", my duty is clear. The appeal against conviction is dismissed.

As to the sentence I held the view that it is impossible not to take into account the circumstances under which an offence came to be committed. The moral obliquity, in this case, is nothing like on a par with an abuse by a public officer of his post to extort bribes. There are varying degrees of culpability in offences under the Act. Here the appellant had been deliberately sought out and whatever resistance he ought to have had was eroded by the persistent attention of Ramadass. The result of the appellant's conviction will gravely affect his future, apart from the loss of his post and pension. Taking all relevant facts into consideration I think that justice will be served by setting aside the sentence of imprisonment, and in lieu thereof I fine him the sum of $5,000, in default 12 months imprisonment. The order of the president under section 13 of the Act is affirmed.

Appeal dismissed. Sentence of imprisonment set aside. Fine imposed.

Solicitors: *Singh & Co.*

HARI SINGH v. SUNDARAMMAL

[O.C.J. (MacIntyre J.) May 31, 1965]

[Ipoh — Civil Suit No. 526 of 1964]

Practice and Procedure — Attachment before judgment — Application to set aside ex-parte order — Affidavit containing statements based on knowledge, information and belief — Hearing of motion to set aside ex-parte order made in chambers — Fresh evidence — R.S.C. 1957, O. 38 r. 3 — Debtors Ordinance, 1957, s. 20.

The defendant applied for an order to set aside an *ex-parte* order of attachment before judgment of the defendant's land. The affidavit in support of the application for the order of attachment was made by the plaintiff who deposed "to the best of my knowledge, information and belief".

Held: (1) in an *ex-parte* application for an order of attachment the person making the application must show that he has a good cause of action and he must show the utmost good faith by not holding back vital information touching upon matters pertinent to the application;

(2) in this case the plaintiff had failed to disclose the fact that the money was borrowed and the acknowledgment signed not by the defendant herself but by her agent, and therefore the *ex-parte* order must be discharged;

(3) when knowledge and information and belief are alleged at the same time in an affidavit it is necessary for the defendant to state how much of the allegation is based on personal knowledge and how much on information and belief;

(4) fresh evidence cannot be introduced at the hearing of a motion to set aside an *ex parte* order made in chambers.

Cases referred to:—

(1) *In re J. L. Young Manufacturing Co. Ltd.* [1900] 2 Ch. 753, 754 and 755.

(2) *Cartwith Ltd.* v. *J. E. Lloyd & Ors.* [1965] 1 M.L.J. 140.

(3) *Quartz Hill Consolidated Gold Mining Company* v. *Beall* (1881-2) 20 Ch.D. 501, 508.

(4) *Madan Theatres Ltd.* v. *Hari Das* A.I.R. 1936 Lahore 33, 34.

(5) *Munns* v. *Longden* 32 W.R. 675.

APPLICATION TO SET ASIDE *EX PARTE* ORDER.

K. C. Vohrah for the plaintiff.

P. P. Dharmananda for the defendant.

MacIntyre J.: In this application, Mr. Dharmananda for the defendant moves the court by notice of motion to set aside an *ex-parte* order of attachment before judgment of the defendant's land made by me in chambers on the 14th of December 1964 under section 19 of the Debtor's Ordinance, 1957. The application is made under section 20 of the said Ordinance.

One of the statutory requirements of which the court must be satisfied before making an order of attachment before judgment is that the plaintiff has a good cause of action. It is also settled law that on an *ex-parte* application, the person making the application should show the utmost good faith by not holding back any vital information touching upon matters pertinent to the application.

In his statement of claim endorsed on the writ, the plaintiff claims a sum of $8,507.54 of which the sum of $8,000 is alleged to be a loan given to M. Sundarammal (f), the defendant, on the 31st of July 1964 and the sum of $507.54 is said to be interest at 18% per annum from 31st July to 4th December 1964 due and owing by virtue of a consent in writing signed by the defendant herself on the 31st of July 1964.

In his affidavit dated the 7th of December 1964 and filed in support of the application for an attachment before judgment, the plaintiff says, *inter alia*, that the defendant had come to Malaya on a visit pass and that to the best of his knowledge, information and belief she was making arrangements to leave the country for good on the 17th of December 1964. He further says: "to the best of my knowledge, information and belief the defendant is negotiating the sale of her interests on this said two pieces of land."

Now, the facts alleged in the affidavit read in conjunction with the statement of claim is calculated to create the impression that the defendant arrived in this country on a short visit, borrowed the sum of $8,000 from the plaintiff and was about to leave the country for good after disposing her interests in her two pieces of land.